DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Centers for Medicare & Medicaid
Services

42 CFR Parts 417, 422, and 423

[CMS–4157–CN]

RIN 0938–AQ86

Medicare Program; Changes to the
Medicare Advantage and the Medicare
Prescription Drug Benefit Programs for
Contract Year 2013 and Other
Changes; Corrections

AGENCY: Centers for Medicare &
Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period;
correction.

SUMMARY: This document corrects
technical errors and typographical
errors in the final rule with comment
period entitled “Medicare Program;
Changes to the Medicare Advantage and the
Medicare Prescription Drug Benefit
Programs for Contract Year 2013 and
Other Changes” which appeared in the
April 12, 2012 Federal Register.

DATES: Effective date: This document is
effective June 1, 2012.

FOR FURTHER INFORMATION CONTACT:
Kathryn Jansak, (410) 786–9364.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–8071 of April 12,
2012 (77 FR 22072), the final rule with
comment period entitled “Medicare
Program; Changes to the Medicare
Advantage and the Medicare
Prescription Drug Benefit Programs for
Contract Year 2013 and Other Changes”
there were several technical errors and
 typographical errors that are identified
and corrected in the Correction of Errors
section.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 22072, in the dates
section, we erroneously referenced the
amendments to the definitions of “other
health or prescription drug coverage” at
§ 423.2305 and “supplemental benefits”
at § 423.100 as being effective January 1,
2013. We also inadvertently omitted
to several sections of the
regulation text that are effective January 1,
2013.

On page 22076, the table titled “Table
2: Finalized Revisions with Effective
and/or Applicable Dates Other Than 60
Days After Publication” was
inadvertently numbered “Table 2” instead
of “Table 1.”

On page 22082, in the discussion
regarding the effective and applicable
dates of the regulatory and conforming
to the definition of “other
health or prescription drug coverage,”
we inadvertently omitted language.

B. Summary of Errors in the Regulations
Text

On page 22169, we made a
typographical error in an amendatory
instruction and inadvertently omitted a
term in the definition of “daily
cost-sharing rate” at § 423.100.

III. Waiver of Proposed Rulemaking
and Delay in Effective Date

We ordinarily publish a notice of
proposed rulemaking in the Federal
Register to provide a period for public
comment before the provisions of a rule
take effect in accordance with section
553(b) of the Administrative
Procedure Act (APA) [5 U.S.C. 553(b)]. However,
we can waive this notice and comment
procedure if the Secretary finds, for
good cause, that the notice and
comment process is impracticable,
unnecessary, or contrary to the public
interest, and incorporates a statement of
the finding and the reasons therefore in
the notice.

Section 553(b) of the APA ordinarily
requires a 30-day delay in effective date
of final rules after the date of their
publication in the Federal Register.
This 30-day delay in effective date can
be waived, however, if an agency finds
for good cause that the delay is
impracticable, unnecessary, or contrary
to the public interest, and the agency
incorporates a statement of the findings
and its reasons in the rule issued.

This correcting document does not
constitute a rulemaking that would be
subject to the APA notice and comment
or delayed effective date requirements.
This correcting document corrects
technical errors in the effective dates
and typographical errors in the
regulation text of the April 12, 2012
final rule with comment period and
does not make substantive changes
to the policies or payment methodologies
that were adopted in the final rule with
comment period. As a result, this
correcting document is intended to
ensure that information included in the
April 12, 2012 final rule with comment
period accurately reflects the policies
adopted in that rule. Undertaking
further notice and comment procedures
to incorporate the corrections in this
document into the final rule with
comment period would be contrary to
the public interest. Furthermore, such
procedures would be unnecessary, as
we are not altering the policies that
were already subject to comment and
finalized in our final rule with comment
period. Therefore, we believe we have
good cause to waive prior notice and
comment.

For the same reasons, we are also
waiving the 30-day delay in effective
date for these corrections. We believe
that it is in the public interest to ensure
that the April 12, 2012 final rule with
comment period accurately states our
policies as of the date they take effect.
Therefore, we find that delaying the effective
date of these corrections
beyond the effective date of the final
rule with comment period would be
contrary to the public interest. In so
doing, we find good cause to waive the
30-day delay in the effective date.

IV. Correction of Errors

In FR Doc. 2012–8071 of April 12,
2012 (77 FR 22072), make the following
corrections:

A. Correction of Errors in the Preamble

1. On page 22072, first column,
“DATES” section, the paragraph that
begins “These regulations are effective”
and ends “are effective January 1, 2013”
is corrected to read “These regulations
are effective on June 1, 2012 unless
otherwise specified in this final rule.

The amendments to: the definition of
“Part D drugs” at § 423.100;
§ 423.153(d)(1)(vii)(B); § 423.600(a)
through (c); and § 423.602(a) are
effective January 1, 2013. See section
I.B. of this final rule with comment
period and Table 1 for additional
information regarding effective and
applicability dates.”

2. On page 22076, bottom half of
the page, the table heading, “TABLE 2—
FINALIZED REVISIONS WITH
EFFECTIVE AND/OR APPLICABLE
DATES OTHER THAN 60 DAYS AFTER
PUBLICATION” is corrected to read
“TABLE 1—FINALIZED REVISIONS
WITH EFFECTIVE AND/OR
APPLICABLE DATES OTHER THAN 60
DAYS AFTER PUBLICATION”.

3. On page 22082, third column,
second full paragraph, line 17, the
phrase “existing definition will on” is
corrected to read “existing definition
will be applicable on”.

B. Correction of Errors in the
Regulations Text

1. On page 22169, first column—
A. Fourth full paragraph,
(amendments to § 423.100, amendatory
instruction 24.B.) lines 5 and 6, the
sentence “By revising paragraph (2)(iii)
of the definition of “Incurred costs” is
corrected to read “By revising paragraph
(2)(ii) of the definition of “Incurred
costs”.”
B. Tenth full paragraph (paragraph (2) of the definition of “Daily cost-sharing” at § 423.100), line 2, the phrase “enrollee’s Part D” is corrected to read “enrollee’s Part D plan”.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774)

Dated: May 24, 2012.

Jennifer M. Cannistra, Executive Secretary to the Department.

FOR FURTHER INFORMATION CONTACT: Kate Michie, 727–824–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).


NMFS partially approved Amendment 18A on May 2, 2012. NMFS disapproved the action establishing transferability criteria for the black sea bass pot endorsement, explaining that the amendment identified the wrong preferred alternative selected for this action, and there were discrepancies in the record regarding the Council’s discussion of the alternatives and the text describing and analyzing this alternative in the document. Because the Council’s intent was unclear from the administrative record, NMFS was unable to implement this action in compliance with the Administrative Procedure Act. The Council is addressing transferability criteria for black sea bass pot endorsements in a separate FMP amendment, which is currently under development.

The proposed rule and Amendment 18A outline the rationale for the actions contained in this final rule. The proposed rule incorrectly indicated that it would modify the black sea bass rebuilding strategy and ABC. Although these measures are included in Amendment 18A, they are not codified in the regulations. A summary of the actions implemented by this final rule is provided here.

This rule modifies the black sea bass annual catch limit (ACL); limits participation in the black sea bass pot segment of the snapper-grouper fishery through an endorsement program; establishes an appeals process for fishermen excluded from the black sea bass pot endorsement program; limits the number of pot tags issued to participants in the black sea bass pot segment of the snapper-grouper fishery; implements measures to reduce black sea bass bycatch; modifies accountability measures (AMs) for black sea bass; establishes a commercial trip limit for black sea bass; modifies the current commercial and recreational black sea bass size limits; and improves data reporting in the for-hire sector of the snapper-grouper fishery. The intent of this rule is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery.

Comments and Responses

A total of 28 comments were received on the proposed rule and Amendment 18A from individuals, Federal agencies, and fishing associations. NMFS received 2 comments of general support and 26 individual comments opposing one or more actions contained in Amendment 18A. Several of the comments recommended alternative management measures for black sea bass. Specific comments related to the actions contained in the amendment and the rule as well as NMFS’ respective responses, are summarized below.

Comment 1: Several commenters stated they have recently seen more black sea bass and larger black sea bass than in previous years. Additionally, several commenters stated they are seeing black sea bass in areas where they were not previously found. For these reasons the same commenters stated the commercial and recreational ACLs for black sea bass should be significantly increased to allow for more fishing of the stock.

Response: Many fishery participants have indicated they are now seeing more black sea bass and larger black sea bass than in previous years, which is consistent with the findings of the most recent Southeast, Data, Assessment, and Review (SEDAR) for black sea bass which was completed in October 2011 (SEDAR 25). SEDAR 25 indicates that black sea bass are no longer overfished, but are not yet fully rebuilt, and that black sea bass was experiencing overfishing to a small extent based on data from 2009 and 2010. Amendment 17B to the FMP (Amendment 17B), which was implemented on January 31, 2011, established ACLs and AMs for black sea bass to ensure overfishing of black sea bass does not occur (75 FR 82260). The Magnuson-Stevens Act requires rebuilding plans to rebuild a stock within 10 years except under limited...